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No. 07-1189

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In The
Supreme Court of the United States

CHARLES HAINS and DANIEL MCSHANE,
Petitioners,

v.

JOSEPH MICHAEL LOGSDON,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

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June 2, 2008

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QUESTION PRESENTED BY PETITIONERS

Does the accusation of a known, credible victim establish probable cause to arrest?

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STATEMENT OF THE CASE

A. STATEMENT OF FACTS

This statement of facts mirrors the allegations in the Complaint and is consistent with the two state court transcripts that the District Court admitted into the record as part of this Civil Rule 12(b)(6) proceeding.

1. Logsdon's Commitment To His Pro-Life Message.

Respondent Joseph Michael Logsdon has a long history of pro-life activism, spending countless hours on the public sidewalks outside of local abortion clinics peacefully protesting against abortion and counseling women against having abortions. Mr. Logsdon has never threatened or committed any acts of violence in the course of his activism, though on some occasions during the past 15 years he has walked onto abortion clinic property, risking arrest and prosecution, in order to communicate with pregnant women and others to persuade them of the evils of abortion and the value of every human life. When prosecuted and/or convicted of *Criminal Trespass* for such activity, Mr. Logsdon has always treated judges and prosecutors with respect, served his sentences with dignity, and complied with any related court orders.

2. Mr. Logsdon's October 2003 Arrest By Petitioner Hains.

On October 28, 2003, Mr. Logsdon was present on the public sidewalk outside of Cincinnati Women's

Services (CWS), a Cincinnati abortion clinic, engaging in his usual protest and counseling activities. As he often did, Mr. Logsdon placed a pro-life sign on a fence that belonged to the neighboring property and abutted the CWS parking lot. The sign read: "GOD HAS A PLAN FOR YOUR BABY", and listed a telephone number that women could call for help.

Without any provocation except for the alleged complaint of a CWS patient and her own disapproval of the message on Mr. Logsdon's sign, CWS President Debi Jackson ("Jackson") removed the sign from the neighbor's fence and walked toward the CWS clinic with the intention of destroying it. From his position on the public sidewalk, Mr. Logsdon verbally challenged Jackson's theft of the sign and repeatedly demanded that she return it to him. When she refused to do so, Mr. Logsdon walked onto clinic property to confront Jackson, took the sign back from her, and returned immediately to the public sidewalk. Mr. Logsdon committed no act of violence and stayed on CWS property only long enough to recover his stolen sign.

Jackson's theft of Mr. Logsdon's sign created a legal privilege for him to enter CWS property in order to retrieve it, so that as a matter of law Mr. Logsdon committed neither *Criminal Trespass* nor any other crime while on CWS property. Yet, Jackson proceeded to call City of Cincinnati police to report that Logsdon had committed a crime.

Petitioner Hains responded to Jackson's call and arrested Mr. Logsdon even though Hains had obtained no warrant for Mr. Logsdon's arrest, was not present

during the sign incident, had witnessed no crime, and knew or should have known – based upon facts readily available to him - that Mr. Logsdon's conduct was legally privileged and that Jackson was the wrongdoer. More importantly, Defendant Haines deliberately disregarded facts that were readily available to him and which established Mr. Logsdon's innocence, cutting off the attempted explanation of another witness/sidewalk counselor with the comment: "Tell it to the judge."

Demonstrating a blatant bias against Mr. Logsdon in favor of whatever CWS wanted, and ignoring the fact that Jackson had committed the only crime at the scene, Defendant Hains arrested Mr. Logsdon, transported him to the Hamilton County Justice Center and filed criminal charges against him alleging *Criminal Trespass* and *Disorderly Conduct* (non violent misdemeanors under Ohio law). Mr. Logsdon was detained in the Hamilton County Justice Center for four hours before being released.

After a bench trial in the Hamilton County Municipal Court, Mr. Logsdon was found guilty of *Criminal Trespass* but not guilty of *Disorderly Conduct*. Mr. Logsdon appealed the *Criminal Trespass* conviction, which was reversed and vacated by the First Appellate District of Ohio on April 22, 2005.[1]

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[1] *State v. Logsdon*, 2005-Ohio-1875, 160 Ohio App.3d 517.

3. Mr. Logsdon's June 2004 Arrest By Petitioner McShane.

On June 18, 2004, Mr. Logsdon was again present on the public sidewalk outside of CWS, engaging in his usual protest and counseling activities. At one point, Mr. Logsdon decided to speak with a woman who had arrived by car in the CWS parking lot. Rather than attempting to speak to the woman from the distant public sidewalk, Mr. Logsdon elected to walk into the public park that abuts the CWS parking lot and to speak to the woman through a chain link fence. During the entire conversation, Mr. Logsdon remained in the public park, after which he returned to the public sidewalk.

In spite of the fact that Mr. Logsdon never entered CWS property, someone at CWS called the Cincinnati police alleging that he had trespassed. Petitioner McShane responded to the call and promptly arrested Logsdon even though he had obtained no warrant for Logsdon's arrest, was not present during the incident, had witnessed no crime, and nothing resembling a crime had occurred. In fact, McShane deliberately disregarded facts that were readily available to him and which established Logsdon's innocence, ignoring the attempted explanation of another sidewalk counselor who was present.

Petitioner McShane demonstrated a blatant bias against Mr. Logsdon and in favor of doing whatever CWS wanted. Petitioner McShane arrested Logsdon, transported him to the Hamilton County Justice Center, and filed a criminal charge against him for *Criminal Trespass* (a non violent misdemeanor under

Ohio law.) The *Criminal Trespass* charge was later dismissed without trial.

Mr. Logsdon suffered damages as a direct and proximate result of both arrests.

4. State Court Transcripts.

As noted above, the Petitioners filed with the District Court two transcripts from the state court prosecution of Mr. Logsdon relative to the October 2003 arrest by Petitioner Hains. However, neither transcript contains any testimony by Hains or any mention of him. They therefore add nothing to the body of facts governing this appeal regarding (i) what Hains understood about the incident before or after he arrested Mr. Logsdon, or (ii) why Hains could have believed that he had probable cause to arrest Mr. Logsdon.

Neither state court transcript relates to Mr. Logsdon's June 2004 arrest by Defendant McShane.

B. Procedural Background.

On August 16, 2005, Mr. Logsdon filed a *Complaint For Money Damages* in the United States District Court for the Southern District of Ohio against Petitioners Hains and McShane, asserting five causes of action against each: federal claims for First and Fourth Amendment violations and three related state law claims.

On December 8, 2005, Petitioners filed a motion to dismiss under Civil Rule 12(b)(6), which the District

Court granted on June 27, 2006. Mr. Logsdon appealed.

On July 6, 2007, the United States Court of Appeals for the Sixth Circuit reversed the dismissal of the District Court and remanded the case for further proceedings. Petitioners' motion for rehearing en banc was denied on December 13, 2007.

REASONS FOR DENYING THE WRIT

The Petition fails to present any issue that meets the jurisdictional requirements under Supreme Court Rule 10.

1. The Petition Miscasts an Issue of Fact.

The first reason for denying the writ is that Petitioners have cast their issue to the Court with an unwarranted factual assertion that both triggers the admonition in Supreme Court Rule 15.2 and violates the mandate of Civil Rule 12(b)6).

Specifically, the Petition asserts a "probable cause" issue involving a "known, credible victim," when nothing in this record suggests that Petitioners knew the alleged "victim" at all. Moreover, nothing in this record speaks to the credibility of the alleged victim. Rather, Petitioners have fabricated that characterization as they grasped for an appeal issue in violation of Civil Rule 12(b)(6), which requires the Court to "construe the complaint in the light most favorable to the plaintiff and accept all well-pleaded material allegations in the complaint as true." *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). The Court must

liberally construe the complaint in favor of the party opposing the motion, *Kugler v. Helfant*, 421 U.S. 117, 125-26 n.5 (1975), not entertain self-serving fabrications of the moving party.

On remand Petitioners will have an opportunity to develop their "probable cause" argument with whatever witnesses they can produce, but there is no basis at this stage of the case for discussing police reliance on witnesses, credible or otherwise, until there is something in the record to establish what and whom the Petitioners knew at the time of the arrests.

The Petition must be denied if only because the factual underpinning of the issue presented is itself a fabrication.

2. The Petition Cites Only Inapposite Case Law That Does Not Present A Conflict Between Circuit Courts.

The second reason for denying the writ is that Petitioners have cited no case law that suggests a conflict in the circuit courts.

A police officer may arrest a person if he has probable cause to believe that the person committed a crime. *Tennessee v. Garner*, 471 U.S. 1, 7 (1985). Probable cause exists where the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. *Draper v. United States*, 358 U.S. 307, 313 (1959).

The facts of this case are that Petitioners arrested Mr. Logsdon without a warrant, on separate occasions, while deliberately disregarding readily available evidence of his innocence. The only two cases cited by Petitioners involve Fourth Amendment issues far removed from the facts of this case.

Both *Wilson v. Russo*, 212 F.3d 781 (3rd Cir. 2000) and *Beauchamp v. City of Noblesville, Ind.*, 320 F.3d 733 (7th Cir. 2003), involved police conduct (i) in obtaining arrest warrants, (i) when the identification of the perpetrator was in doubt, and (iii) when the police failed to disclose certain inculpatory facts while seeking the warrant. This case, on the other hand, involves (i) police refusal to listen to Mr. Logsdon's version of the events, (ii) before making a warrantless arrest, (iii) when the question was not about a perpetrator's identity but rather whether any crime had been committed at all.

Moreover, both *Wilson* and *Beauchamp* support Mr. Logsdon's position, as reinforced by the Sixth Circuit, that a probable cause analysis requires police to consider all available information:

> Independent exculpatory evidence or substantial evidence of the witness's own unreliability that is known by the arresting officers could outweigh the identification such that probable cause would not exist. *Each case must therefore be examined* on its own facts.

Wilson at 790 (emphasis added). A police officer cannot examine facts if he refuses to hear about them.

Likewise:

> The complaint of a single witness or putative victim alone generally is sufficient to establish probable cause to arrest unless the complaint would lead a reasonable officer to be suspicious, in which case the officer has a further *duty to investigate.*

Beauchamp at 743 (emphasis supplied).[2]

The foregoing passages are completely consistent with the Sixth Circuit's observation that because Petitioners "deliberately disregarded available evidence [they] failed to reasonably formulate probable cause." Appendix to Petition, p. 15a.

Not only, therefore, are the facts of *Wilson* and *Beauchamp* distinguishable from the alleged facts in this case and insufficient to create a true conflict, but Wilson and Beauchamp recognize the very principles upon which the Sixth Circuit's decided this case. As the Sixth Circuit stated elsewhere, "police officers may not 'make hasty, unsubstantiated arrests with impunity,' nor 'simply turn a blind eye toward potentially exculpatory evidence known to them in an

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[2] This Court no doubt recognizes that conflicts between abortion clinics and pro-life activists on nearby sidewalks are highly polarized situations. It is difficult to imagine any reasonably trained police officer believing that he could determine probable cause in such a situation by listening to only one side of the dispute.

effort to pin a crime on someone." *Radvansky v. City of Olmsted* Falls, 395 F.3d 291, 305 (6th Cir. 2005).

CONCLUSION

For all of the foregoing reasons, and for the reasons articulated in the Sixth Circuit's decision below, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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